



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

September 15, 1972

Honorable C. J. Eden
County Attorney
Stephens County
110 East Walker
Breckenridge, Texas 76024

Opinion No. M-1218

Re: Authority of the Commissioners Court to grant a permit to a corporation for use of right-of-ways of county roads for locating pipeline for transmission of water in connection with water flood operation in oil production.

Dear Mr. Eden:

We have received your recent request, accompanied by your able brief, for an opinion of this department on the following question:

"Whether or not the Commissioners Court of Stephens County or a Commissioner of said county has the authority to grant a permit or license to give consent for a Texas corporation, qualified as a public utility, to lay pipeline along the right-of-way of a county road for the transmission of water to a second corporation, an oil producing corporation, for use in water-flood operations in connection with the production of oil."

Your letter which accompanied your request indicates that the applicant is "Gra-Pet Gas Company, a Texas corporation, which corporation is classified as a public utility. . . ."

An examination of the Articles of Incorporation of the Gra-Pet Gas Company leaves considerable doubt in our mind

as to whether the purpose clause gives the corporation the authority to buy and sell water. Nor do we find in the articles any provision which would classify the corporation as a public utility in connection with the sale of water.

We are of the opinion that absent an amendment to the articles to remedy the above stated deficiencies, the Commissioners Court has no power to grant the permit, nor does the corporation have the right to lay the lines.

We are of the opinion, however, that a Texas corporation with authority to sell and transport water as a public utility would have the right under Article 1433, Vernon's Civil Statutes, so far as the county is concerned, to lay its lines along the right of way of a county road.

Article 1433 reads as follows:

"Any water corporation shall have the power to sell and furnish such quantities of water as may be required by the city, town or village where located for public or private buildings or for other purposes; and such corporation shall have the power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares of any such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. Such corporation is further authorized to lay its pipes, mains and conductors and other fixtures for conducting water through, under, along, across and over all public roads, streets and waters lying and situated outside the territorial limits of any such city, town, or village in such manner as not to incommode the public in the use of such roads, streets and waters. Any such corporation shall notify the State Highway Commission, or the Commissioners Court having jurisdiction, as the case may be,

when it proposed to build lines along the right of way of any State Highway, or county road, outside the limits of any incorporated city or town, whereupon the Highway Commission, or the Commissioners Court may, if it so desires, designate the place along the right of way where such lines shall be constructed. The public agency having jurisdiction or control of a highway or county road, that is, the Highway Commission or the Commissioners Court, as the case may be, may require any such corporation, at its own expense, to relocate its lines on a State Highway or county road outside the limits of an incorporated city or town, so as to permit the widening or changing of traffic lanes, by giving thirty (30) days written notice to such corporation and specifying the line or lines to be moved, and indicating the place on the new right of way where such line or lines may be placed. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing waterworks or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private property necessary for the construction of supply reservoirs or standpipes for water work. Acts 1874, p. 134; G.L. Vol. 8, p. 136; Acts 1909, p. 8; Acts 1949, 51st Leg., p. 1370, ch. 622, § 1." (Emphasis added.)

Attorney General's Opinion No. M-508 (1969) includes the following pertinent language:

"It has been recognized further that it is in the public interest to receive utility services; therefore, public utilities are authorized to use the streets and highways. State v. City of Austin (State v. City of Dallas), 160 Tex. 348, 331 S.W.2d 737 (1960).

"The Legislature acting for the State has primary and plenary power to control public roads and streets. Recognizing this proposition, the Court in State v. City of Dallas (State v. City of Austin), 319 S.W.2d 767 (Tex.Civ.App. 1959, aff. 331 S.W.2d 737) said at page 773:

'There can be no question but that the Legislature can lawfully permit cities and private corporations to place facilities in streets and highways to provide essential utility service for the public, . . .'

"The Legislature has seen fit to grant direct statutory authorization to public utilities to use public roads and highways. Some such authority is found in Articles 1416, 1433, 1436a and 1436b, Vernon's Civil Statutes. It would therefore appear that Article 6203d, Vernon's Civil Statutes, would be rendered inapplicable to the question presented, since no additional grant of an easement would be necessary in order to entitle public utilities to take advantage of the right-of-way of existing public roadways. Accordingly, the Texas Board of Corrections would not be obligated to collect, nor public utilities required to pay, for placing lines in, on, along or across existing public roadways traversing State land under the custody and control of the Texas Department of Corrections." (Emphasis added.)

In view of all of the foregoing, a Texas water corporation, qualified as a public utility, has the right to lay its pipes along the right of way of county roads pursuant to Article 1433.

Note that we have held that under certain facts, the corporation has the right to lay its lines. This is under authority of the Legislature as expressed in Article 1433 and

is not pursuant to any permit issued by the county. Indeed, the statute does not provide for a permit except as to where on the right of way the pipes shall be laid.

We make the above statement for the reason that the question has been raised of claims that the abutting land owners might have against the county where the county right of way has been obtained by prescription. As we interpret Article 1433, the county is not a party to any action taken by the corporation. Such action is under authority of a legislative enactment, and the doctrine of sovereign immunity protects the State from suit.

With reference to the right under a State statute of the utility to lay its lines, see Heldt v. Southwestern Bell Telephone Co., 482 S.W.2d 352, 356 (Tex.Civ.App. 1972) where the Court wrote, in what we consider a valid analogy:

"Appellee, under the authority of Article 1464, V.A.C.S., is authorized to erect its poles, wires and other fixtures along, upon and across any public roads, streets and waters of Texas, subject only to the restriction that same must be done in a manner as not to incommode the public in the use of such roads, streets, and waters. This is a right granted by the State which cannot be denied by a municipality or city. . . ."

(Emphasis added.)

S U M M A R Y

A Texas corporation, provided it is qualified as a water corporation and as a public utility, has the right under Article 1433, Vernon's Civil Statutes, to lay its pipes along the right of way of county roads, subject to the conditions set out in said Article.

Hon. C. J. Eden, page 6,

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Very truly yours,



CRAWFORD C. MARTIN

Attorney General of Texas

Prepared by James S. Swearingen
Assistant Attorney General

APPROVED:
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